

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of)
)
Petition of NTUA WIRELESS, LLC for) WC Docket No. 09-197
Designation as an Eligible)
Telecommunications Carrier pursuant to)
Section 214(e)(6) of the Communications Act)
of 1934, as Amended)

REPLY COMMENTS OF NTUA WIRELESS, LLC

NTUA Wireless, LLC (“NTUA Wireless”), a newly established telecommunications service provider for the Navajo Nation, which is majority-owned by the Navajo Tribal Utility Authority (“NTUA”) and is one of the Navajo Nation’s oldest Navajo enterprises, hereby submits these Reply Comments related to its Petition for Designation as an Eligible Telecommunications Carrier (“Petition”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”),¹ for purposes of receiving federal universal service support as a competitive eligible telecommunications carrier (“CETC”) within the exterior boundaries of the Navajo Nation (“Petition”). No party opposes NTUA Wireless’ request for designation as an ETC.² Granting NTUA Wireless’ Petition will significantly benefit the Navajo Nation and its

¹ 47 U.S.C. § 214(e)(6) (2006).

² Frontier Communications Corporation filed comments “solely for the purpose of urging the Commission to deny NTUA’s request for redefinition.” Frontier Comments at p. 1.

people. NTUA Wireless meets the applicable requirements for designation as an Eligible Telecommunications Carrier (“ETC”) and that the Commission has authority to designate NTUA Wireless as an ETC within the Navajo Nation, given that NTUA Wireless has consented to the Navajo Nation’s jurisdiction and recognizes the jurisdiction of the Navajo Nation Telecommunications Regulatory Commission (“NNTRC”) over telecommunications matters on the Navajo Nation. Consequently, NTUA Wireless respectfully urges the Commission to expeditiously grant this Petition.

I. THE COMMISSION HAS JURISDICTION OVER NTUA WIRELESS’ PETITION

NTUA Wireless demonstrated in its Petition that the Commission has authority to designate NTUA Wireless as an ETC pursuant to 47 U.S.C. § 214(e)(6). The Commission can and should assert jurisdiction to make ETC designations on Tribal lands where a carrier, such as NTUA Wireless, has submitted to a Tribe’s jurisdiction over telecommunications services.³ The NNTRC filed comments with the Commission stating that it “has jurisdiction over NTUA Wireless pursuant to Navajo law,”⁴ and that it “acts equivalent to a state regulatory body (PUC or PSC).”⁵ As further explained by NNTRC:⁶

The Navajo Nation Council has passed legislation exercising telecommunications jurisdiction over telecommunications services provided on the Navajo Nation. In addition, the Navajo Nation has established the NNTRC as the regulatory body with statutory powers to establish methods, procedures, schedules, permits, respective fees and reasonable rates of compensation for telecommunications services on the Navajo Nation.

³ See 47 U.S.C. § 214(e)(2), (e)(6) (2006).

⁴ NNTRC Comments at p. 6.

⁵ NNTRC Comments at p. 7. NNTRC further explains that it “works in collaboration and interfaces with the Arizona, New Mexico and Utah Public Regulatory Commissions in matters affecting their respective jurisdictions.” NNTRC Comments at p. 3.

⁶ NNTRC Comments at p. 6.

Moreover, NNTRC's comments specifically note that "NTUA Wireless has both acknowledged regulatory jurisdiction of the NNTRC, and has agreed to be regulated by the NNTRC for its activities on the Navajo Nation."⁷

In addition to submitting to the tribe's jurisdiction, NTUA Wireless has coordinated from the outset and continues to work with the NNTRC to address any questions about NTUA Wireless' Petition and its planned universal service operation within the Navajo Nation. In particular, NTUA Wireless participated in a workshop held by NNTRC on the ETC Petition, and NTUA Wireless has responded in writing to questions raised during the workshop.⁸ Based upon NNTRC's jurisdiction over NTUA Wireless on the Navajo Nation, the Commission has authority to designate NTUA Wireless as an ETC because NTUA Wireless is a "common carrier providing telephone exchange service and exchange access that it not subject to the jurisdiction of a State commission."⁹ In fact, the Commission has exercised its jurisdiction as recently as May 11, 2011 to designate an ETC to serve a reservation where, as here, the ETC petitioner submitted to the tribe's jurisdiction and no state commission contested the FCC's authority to make an ETC determination.¹⁰

The importance of recognizing the jurisdiction and sovereignty of the Navajo Nation and designating NTUA Wireless as an ETC was explained by the NNTRC:

⁷ NNTRC Comments at p. 7.

⁸ See NNTRC Comments at p. 7 and Attachment A and B to NNTRC Comments.

⁹ 47 U.S.C. § 214(e) (2006).

¹⁰ *In the Matter of Telecommunications Carriers Eligible for Universal Service Support, Petition of AT&T Mobility LLC for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act and Transfer of the Alltel Pine Ridge Reservation Eligible Telecommunications Carrier Designation, Order*, WC Docket No. 09-197, DA 11-859 at para. 12 (released May 11, 2011) ("AT&T Pine Ridge ETC Order").

The Navajo Nation government, and NNTRC in particular, have long been frustrated by their lack of control over the delivery of telecommunications services (including broadband) within the boundaries of the Navajo Nation. In the past, FCC's USF program and ETC process has granted substantial subsidies to telecommunications carriers to incentivize them to bring telecommunications services to the Navajo Nation – without including the Navajos in the process. . . . Federal monies have gone directly to carriers who then build, own, and control those facilities to their competitive advantage. Meanwhile, the Navajos are left out of the process, without any ownership interest or ability to design those facilities. In this proceeding, the FCC has the opportunity to truly afford a “place at the table” for the Navajo people, through the NNTRC.¹¹

NNTRC is actively reviewing the Petition of NTUA Wireless, along with other comments filed in this proceeding and information provided to NNTRC by NTUA Wireless, and NNTRC intends to “mak[e] findings of fact and conclusions of law, under Navajo law, as to whether the NTUA Petition and proposed provision of telecommunications services on the Navajo Nation are in the best interest of the Navajo people.”¹² Given the jurisdictional status and role that the NNTRC is playing in this process, it is evident that NTUA Wireless is a “common carrier providing telephone exchange service and exchange access that it not subject to the jurisdiction of a State commission”¹³ and therefore the Commission has jurisdiction to designate NTUA Wireless as an ETC on the Navajo Nation.

II. NTUA WIRELESS MEETS THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER ON THE NAVAJO NATION

NTUA Wireless satisfies each of the statutory and regulatory prerequisites set forth in the Act and the rules and orders of the Commission. No party contends NTUA Wireless fails to meet the applicable requirements for ETC designation, and no party opposes the Commission

¹¹ NNTRC Comments at pp. 4-5.

¹² NNTRC Comments at p. 9.

¹³ 47 U.S.C. § 214(e) (2006).

granting ETC status to NTUA Wireless. As demonstrated in its Petition, NTUA Wireless meets the following requirements for ETC designation:

- common carrier;¹⁴
- offer the supported services;¹⁵
- use its own facilities or a combination of its own facilities and resale of another carrier's service;¹⁶
- provide service throughout its designated service area;¹⁷
- advertise the availability of its universal services and the charges therefore using media of general distribution;¹⁸
- submission of a 5-year network build out plan;¹⁹
- demonstration of the ability to remain function in emergency situations;²⁰
- demonstration that it will satisfy applicable consumer protection and service quality standards;²¹
- demonstration that it offers a local usage plan comparable to the incumbent local exchange carrier in the ETC area;²²

¹⁴ 47 U.S.C. § 214(e)(1) (2006); *see also* 47 C.F.R. § 54.201(d) (2010).

¹⁵ 47 U.S.C. § 214(e)(1) (2006); *see also* 47 C.F.R. § 54.201(d) (2010).

¹⁶ 47 U.S.C. § 214(e)(1) (2006); *see also* 47 C.F.R. § 54.201(d) (2010).

¹⁷ *See also* 47 C.F.R. § 54.202(a)(1)(i) (2010) (explaining that, for ETC designation, a common carrier must commit to provide service throughout the ETC area to all customers making a reasonable request for service).

¹⁸ 47 U.S.C. § 214(e)(1) (2006); *see also* 47 C.F.R. § 54.201(d) (2010).

¹⁹ 47 C.F.R. § 54.202(a)(1)(ii) (2010).

²⁰ 47 C.F.R. § 54.202(a)(2) (2010).

²¹ 47 C.F.R. § 54.202(a)(3) (2010).

²² 47 C.F.R. § 54.202(a)(4) (2010).

- acknowledgement that it may be required to provide equal access to long distance carriers;²³
- demonstration that the public interest would be served by granting the ETC application;²⁴ and
- offer a discounted rate plan, e.g., Lifeline and Link-Up, to qualified low-income consumers.²⁵

III. NTUA WIRELESS' REQUESTED ETC SERVICE AREA IS LIMITED TO THOSE AREAS WITHIN THE NAVAJO NATION

NTUA Wireless' requested designated service area includes the area within the exterior boundaries of the Navajo Nation, including Eastern Navajo Agency and the "island" chapters of To'hajilee, Alamo and Ramah, which was recognized by NNTRC:²⁶

The territory sought by NTUA Wireless is exactly the area over which the NNTRC has telecommunications regulatory jurisdiction. The FCC thus has jurisdiction to determine whether NTUA Wireless should be designated an ETC within the borders of the Navajo Nation.

In its request for ETC designation within the borders of the Navajo Nation, NTUA Wireless includes a partial wire center of Citizens Telecommunications Company of the White Mountains ("White Mountains"), a subsidiary of Frontier Communications Corporation ("Frontier"). In its Comments, Frontier asks the Commission to deny NTUA Wireless' request for redefinition, contending that "redefinition would in fact cause Frontier significant administrative burdens."²⁷ Frontier states that it has disaggregated its costs to the wire center

²³ 47 C.F.R. § 54.202(a)(5) (2010).

²⁴ 47 U.S.C. § 214(E)(6) (2006).

²⁵ 47 C.F.R. § 54.405 (2010).

²⁶ NNTRC Comments at p. 7.

²⁷ Frontier Comments at p. 2.

level and that “no further partitioning of the study area is appropriate.”²⁸ While making general statements that redefinition would impose administrative burdens, Frontier does not quantify these administrative burdens, nor does it even explain how redefining a single Frontier wire center that overlaps Navajo Nation would impact Frontier.

The Commission has provided incumbent local exchange carriers (“ILECs”), like Frontier, with the option of disaggregating their costs, and therefore the universal service support associated with their costs, below the study area level. Many ILECs have elected not to disaggregate their costs below the study area level, and consequently universal service support is averaged across an ILEC’s study area. Frontier has disaggregated its costs into three zones, with each zone consisting of Frontier exchanges.²⁹ Frontier argues that its disaggregation plan “required significant analysis to determine costs at the wire center level, and no further partitioning of the study area is appropriate.”³⁰ However, by seeking redefinition of the Frontier wire center serving a portion of the Navajo Nation, NTUA Wireless’ request does not require Frontier to further disaggregate its costs. The Commission has recognized that “in some specific instances, as described below, the factors that militate in favor of disaggregation may not be present. We find that requiring the disaggregation and targeting of support in these instances would serve no rational economic purpose.”³¹

²⁸ Frontier Comments at p. 3.

²⁹ See Frontier Comments at pp. 2-3.

³⁰ Frontier Comments at p. 3.

³¹ *In re Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11,244 at para. 147 (May 10, 2001).

Frontier wire center STJHAZXB serves a very small portion in the southern-most corner of the Navajo Nation in Arizona. Redefining this wire center to enable NTUA Wireless to include this geographic area within its ETC service area would not, in itself, impose any administrative burdens on Frontier. While Frontier could elect to disaggregate its costs within wire center STJHAZXB to those areas within the Navajo Nation and those areas outside of the Navajo Nation, Frontier is not compelled to do so. Furthermore, this wire center serves a very rural area of Navajo Nation where there appears to be no reason to believe that the costs to serve the area within Navajo Nation are less than the costs to serve those areas outside of Navajo Nation.

Because redefinition of Frontier wire center STJHAZXB would not, in itself, require Frontier to further disaggregate its costs and because there does not appear to be any benefit from further disaggregation, the Commission should redefine Frontier's service area to enable NTUA Wireless to include all of Navajo Nation in its ETC service area. Finally, NTUA Wireless notes that its Petition is consistent in this regard with the Commission's recent order granting ETC status to a carrier over partial wire center areas within the boundaries of an Indian reservation.³²

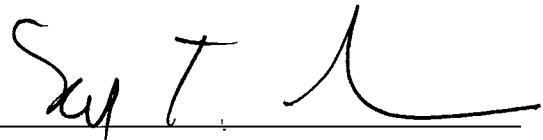
³² *AT&T Pine Ridge ETC Order*, DA 11-859 at Appendix.

CONCLUSION

No party has opposed NTUA Wireless' Petition for ETC designation. NTUA Wireless respectfully requests the Commission expeditiously designate it as an eligible telecommunications carrier for purposes of receiving federal universal service support throughout the Navajo Nation, including the partial wire center areas within the Navajo Nation.

Respectfully submitted,

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